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8  
9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues  
12 Against:

Case No. **202-349**

13 **AMY ELIZABETH SCHALLERT**  
14 **11244 Vista Sorrento Parkway #206**  
**San Diego, CA 92130**

**STATEMENT OF ISSUES**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about June 23, 2011, Amy Elizabeth Schallert (Respondent) certified under  
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the Online  
24 Endorsement Applicant Identification Form for a Registered Nurse License received by the Board  
25 of Registered Nursing, Department of Consumer Affairs. The Board denied the application on  
26 August 31, 2011.

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## JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

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1 (2) Done any act involving dishonesty, fraud, or deceit with the intent to  
2 substantially benefit himself or herself or another, or substantially injure another.

3 (3) (A) Done any act that if done by a licentiate of the business or profession  
4 in question, would be grounds for suspension or revocation of license.

5 (B) The board may deny a license pursuant to this subdivision only if the  
6 crime or act is substantially related to the qualifications, functions, or duties of the  
7 business or profession for which application is made.

8 . . . .

9 7. Section 482 of the Code states:

10 Each board under the provisions of this code shall develop criteria to evaluate  
11 the rehabilitation of a person when:

12 (a) Considering the denial of a license by the board under Section 480; or

13 (b) Considering suspension or revocation of a license under Section 490.

14 Each board shall take into account all competent evidence of rehabilitation  
15 furnished by the applicant or licensee.

16 8. Section 493 of the Code states:

17 Notwithstanding any other provision of law, in a proceeding conducted by a  
18 board within the department pursuant to law to deny an application for a license or to  
19 suspend or revoke a license or otherwise take disciplinary action against a person who  
20 holds a license, upon the ground that the applicant or the licensee has been convicted  
21 of a crime substantially related to the qualifications, functions, and duties of the  
22 licensee in question, the record of conviction of the crime shall be conclusive  
23 evidence of the fact that the conviction occurred, but only of that fact, and the board  
24 may inquire into the circumstances surrounding the commission of the crime in order  
25 to fix the degree of discipline or to determine if the conviction is substantially related  
26 to the qualifications, functions, and duties of the licensee in question.

27 As used in this section, "license" includes "certificate," "permit," "authority,"  
28 and "registration."

9. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or  
deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the  
following:

. . . .

(f) Conviction of a felony or of any offense substantially related to the  
qualifications, functions, and duties of a registered nurse, in which event the record of  
the conviction shall be conclusive evidence thereof.

. . . .

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10. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

....

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

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#### REGULATORY PROVISIONS

11. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

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1 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)  
2 under consideration as grounds for denial which also could be considered as grounds  
3 for denial under Section 480 of the code.

4 (3) The time that has elapsed since commission of the act(s) or crime(s)  
5 referred to in subdivision (1) or (2).

6 (4) The extent to which the applicant has complied with any terms of parole,  
7 probation, restitution, or any other sanctions lawfully imposed against the applicant.

8 (5) Evidence, if any, of rehabilitation submitted by the applicant.

9 . . . .

10 **FIRST CAUSE FOR DENIAL OF APPLICATION**

11 **(June 14, 2007 Criminal Conviction for DUI on January 5, 2007)**

12 13. Respondent's application is subject to denial under section 480, subdivision (a)(1) of  
13 the Code in that she was convicted of a crime that is substantially related to the qualifications,  
14 duties, and functions of a registered nurse. The circumstances are as follows:

15 a. On or about June 14, 2007, in a criminal proceeding entitled *People of the State*  
16 *of Maine v. Amy Elizabeth Schallert*, in Cumberland County Superior Court, Docket Number  
17 PORSC-CR-2007-00725, Respondent was convicted on her plea of guilty to violating Maine  
18 Revised Statutes Title 29-A Section 2411 (1-A) (A) Class D, Operating Under the Influence with  
19 a blood alcohol concentration (BAC) over .15%, a misdemeanor.

20 b. As a result of the conviction, on or about June 14, 2007, Respondent was  
21 sentenced to the Cumberland County Jail for 72 hours, her motor vehicle operator's license was  
22 suspended for a period of 90 days and she was ordered to pay a fine of \$750.00.

23 c. The facts that led to the conviction are that in or about the early morning hours  
24 of January 05, 2007, a patrol officer with the Portland Police Department observed a vehicle  
25 making a right turn without stopping at a flashing red light at the intersection of Forest and Allen  
26 Avenues in the City of Portland. The officer stopped the vehicle and determined that Respondent  
27 was the owner and driver of the vehicle. The officer observed Respondent's glassy eyes and odor  
28 of alcohol coming from the car. The officer asked Respondent to get out of the car for field  
sobriety tests. Respondent had trouble getting out of the car and had to use the car to

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1 balance herself in order to walk to the back of the car without falling. Respondent submitted to  
2 field sobriety tests which she was unable to perform as explained and demonstrated. Based on  
3 Respondent's objective symptoms of intoxication, her performance on the field sobriety tests, and  
4 the video 07-00024 in the cruiser camera at the time of the incident, she was arrested for driving  
5 under the influence of alcohol. At booking, Respondent was subjected to an Intoxilyzer Test that  
6 showed her BAC was .21 percent.

7 **SECOND CAUSE FOR DENIAL OF APPLICATION**

8 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

9 14. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)  
10 of the Code in that on or about January 05, 2007, Respondent used alcoholic beverages to an  
11 extent or in a manner that was dangerous and injurious to herself and the public when she  
12 operated a motor vehicle while under the influence of alcohol, as detailed in paragraph 13, above,  
13 which subjects a licensed registered nurse to discipline under section 2762, subdivision (b) of the  
14 Code.

15 **THIRD CAUSE FOR DENIAL OF APPLICATION**

16 **(Unprofessional Conduct - Conviction of Alcohol-Related Offenses)**

17 15. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)  
18 of the Code in that on or about June 14, 2007, Respondent was convicted of a criminal offense  
19 involving the consumption of alcohol as detailed in paragraph 13, above, which subjects a  
20 licensed registered nurse to discipline under section 2762, subdivision (c) of the Code.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
23 and that following the hearing, the Board of Registered Nursing issue a decision:

- 24 1. Denying the application of Amy Elizabeth Schallert for a Registered Nurse License;  
25 2. Taking such other and further action as deemed necessary and proper.

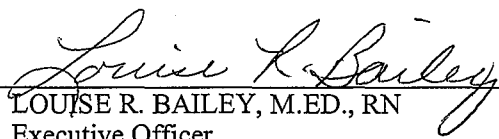
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DATED: December 06, 2011



LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

SD2011801491